

## **2009 TRS FUNDING & RETIRE/REHIRE DRAFT PROPOSAL**

The TRS Board Legislative Committee has tentatively agreed to recommend the following changes to the full Board when they meet on September 12, 2008. Briefly, the changes include:

- Change the reduction that occurs when a retiree exceeds their 1/3 earning limit to a reduction of \$1.00 for every \$5.00 earned over the 1/3 limit. This would allow a retiree to work full-time without complete loss of benefits.
- Increase the break in service from the first of the month following receipt of the retiree's first benefit, to 6 months. It is hoped that a longer break would limit any change in current retirement patterns.
- Require all employers to contribute 17.11% (combined contribution rates) of all compensation paid to rehired retirees. It is anticipated that the additional contributions will help fund the additional cost of members retiring earlier than they would have because of this benefit enhancement.
- It has been shown that when a retiree gives up their benefits and returns to active contributing status that the new benefit they receive when they subsequently retire has an adverse impact on the TRS. Therefore, new section 2 will simply freeze benefits when a retiree returns to active status and then a second benefit will be calculated based on the new service and salary, which will be added to the original benefit.
- Sunset the increased working retiree limits and additional contributions on June 30, 2013. A sunset will give the Board and the Legislature the opportunity to verify if the proposal has had an adverse impact on the TRS.

The committee will also consider suggestions for a single definition of "earned compensation" that would be clear enough to avoid salary spiking opportunities before retirement, and capture all remuneration under a typical post-retirement contract.

**Section 1 – Temporary limits on re-employment of retired members.** (1) Effective July 1, 2009, a retired member who has received benefits for less than 6 months may be reemployed pursuant to 19-20-731 only as a substitute teacher, or to fill in for the absence of a certified teacher on extended military or maternity leave.

(2) Subject to the provisions of this section:

(a) a retired member who has been receiving a service retirement allowance for at least 6 months and who has not been employed by an employer in any capacity, may be re-employed on a part-time or full-time basis by an employer and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (2), the maximum compensation that a retired member may earn under subsection (2)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(3) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(4) The retirement benefit of a retired member earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each \$5 dollars earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be suspended for the remainder of the fiscal year if the reduction in benefits exceeds the gross fiscal year benefit amount.

(5) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102 and an independent contractor.

(6) Each employer employing a retired member under this section must contribute to the system a rate equal to the sum of the rates provided for under 19-20-602, 19-20-604, 19-20-605, and 19-20-607, of the total compensation paid to the retired member.

(7) A retired member reemployed under this section is not eligible for active membership under 19-20-302.

(8) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retiree is subject to all terms and conditions of the agreement and is entitled to all benefits and protections provided by the agreement.

(9) A retiree reemployed pursuant to this section is exempt from the earnings and employments provided in 19-20-731(1) through (3).

(10) The board may adopt rules to implement this section.

## **Section 2. Resumption of employment by retired member – Suspension of**

**benefits.** (1) If a retired member returns to full-time employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until such time as they terminate all employment eligible to participate in the retirement system and apply to have benefits reinstated.

(2) Except as provided in [section 1] and subsection (4) of this section:

(a) Upon termination and retirement of a previously retired member who was reinstated to active membership before July 1, 2009:

(i) if the member earned less than 1 year of creditable service, the original benefit and retirement option they were receiving at the time of cancelation must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later, or;

(ii) if the member earned at least 1 year of creditable service retirement benefits must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(3) Except as provided in [section 1] and subsection (5) of this section, a retired member who was reinstated to active membership after July 1, 2009 and earned:

(a) at least 3 years of membership service and subsequently retires following suspension of benefits, is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804, if the member is eligible for a service retirement benefit, or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement allowance with the same beneficiary originally elected.

(b) less than 3 years of membership service and subsequently retires following suspension of benefits, is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after he was reinstated to active service, plus interest.

(c) If a member dies during the period of reemployment following retirement, the reemployed member shall be considered as retiring on the day preceding the date of death and benefits shall be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary shall receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment the benefits due shall be payable in accordance with the terms of the original option elected and this subsection.

(4) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

**Section 3.** Section 19-20-703 is amended to read:

**“19-20-703. Payments to be monthly.** (1) All retirement allowances must be paid in equal monthly installments.

(2) The retirement allowance may commence:

(a) [except as provided in subsection 5](#), no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(2)(d)(i)(A).

(4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence.

[\(5\) If a member terminates within 30 days of the last day of the school year they will be deemed to have terminated at the end of their contract, and the retirement allowance may commence no earlier than the first day of the month following the last day of school.”](#)

**Section 4.** Section 19-20-731 is amended to read:

**“19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits.** (1) (a) Except as ~~otherwise provided in this section~~ [provided in \[section1\]](#), a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in [\[section 1\]](#) and subsection ~~(5)~~(4), the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

~~—(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:~~

~~—(a) who was reemployed and earned less than 1 year of creditable service must be~~

~~reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~—(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.~~

~~(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.~~

~~(6)~~(4) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

~~(7)~~(5) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."

**Section 5.** 19-20-801 is amended to read:

**19-20-801. Eligibility for service retirement.** A member who has at least 5 full years of creditable service and who has attained the age of 60 or has been credited with full-time

or part-time creditable service in 25 or more years may retire from service if the member has terminated employment in all positions from which the member is eligible to retire and files with the retirement board a written application, which must include a member and employer certification regarding reemployment.

**Section 5. Codification instructions.** [Sections 1 and 2] are intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [sections 1 and 2].

**Section 6. Effective date – applicability.** [This act] is effective July 1, 2009, and applies to retired members who are employed for the school fiscal year beginning on or after [the effective date of this act].

**Section 7. Termination.** [Section 1] terminate July 1, 2013.